

CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California
<http://www.spb.ca.gov/spb.htm>

Public Session Location - Room 150
Closed Session Location - Room 141

FULL BOARD MEETING MINUTES

MARCH 7, 2000

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

Florence Bos, President
Ron Alvarado, Vice President
Richard Carpenter, Member
William Elkins, Member
Sean Harrigan, Member

2. ORAL ARGUMENT

Oral argument in the matter of Bryan W. Duncan, Case No.99-1315. Appeal from 10 working days suspension. Department of California Highway Patrol

Persons Participating:

John Markey, Labor Representative/Legal, California Association of Highway Patrolmen representing appellant
Richard L. Manford, Deputy Attorney General, representing California Highway Patrol

ACTION: Submitted

3. ORAL ARGUMENT

Oral argument in the matter of Michael A. Thompson, Case No. 98-3739. Appeal from dismissal. Department of Corrections.

Persons Participating:

No show for appellant's representative
Cynthia Rodriguez, Senior Staff Counsel, representing
Department of Corrections

ACTION: Submitted

4. ORAL ARGUMENT

Oral argument in the matter of Greg Grusiewicz, Case No. 99-0834. Appeal from dismissal. Department of Developmental Services.

Persons Participating:

Jay Salter, Consultant, California Association of Psychiatric Technicians, representing appellant
Mark Catrambone, Staff Counsel, representing Department of Developmental Services

ACTION: Submitted

5. ORAL ARGUMENT

Oral argument in the matter of William A. Jones, III, Case No. 98-4069. Appeal from official reprimand. Department of the Youth Authority.

ACTION: Cancelled - Parties reached settlement.

6. HEARING - MANAGERIAL BROADBANDING

Because of issues and concerns that have been raised by departments as well as employee organizations regarding the proposed provisions of the managerial broadbanding demonstration project, the demonstration project for which these enabling regulations were developed has never been implemented, and there are no plans to implement it in the future. Consequently, staff recommends repealing the

enabling regulations to prevent additional controversy and confusion as to their purpose.

Persons Participating:

Steve Unger, Staff, California State Personnel Board
Jack Lyall, Executive Officer, Association of California
State Supervisors

ACTION: On March 7, 2000, adopted staff's recommendation.

VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

7. HEARING - APPEAL OF THE DEPARTMENT OF PERSONNEL
ADMINISTRATION (DPA) FROM THE EXECUTIVE OFFICER'S DECEMBER
21, 1999 DISAPPROVAL OF DPA'S ONTRACT NO. S9840129 (CONTRACT)
WITH ALEXANDER COHN FOR "MINI-ARBITRATION SERVICES" IN
RESPONSE TO THE REQUEST FOR REVIEW UNDER GOVERNMENT CODE
SECTION 19130 SUBMITTED BY THE ASSOCIATION OF CALIFORNIA
STATE ATTORNEYS AND ADMINISTRATIVE LAW JUDGES(ACSA)

Persons Participating:

Linda D. Buzzini, Labor Relations Counsel, Department of
Personnel Administration
Steven Bassoff, Labor Relations Counsel, Association of
California State Attorneys and Administrative Law Judges
Ronald Yank, Attorney at Law, Carroll, Burdick & McDonough
LLP, representing CDF Firefighters

ACTION: Submitted

8. ORAL ARGUMENT
Oral argument in the matter of Thomas Benson, Case
No. 99-1386. Appeal from dismissal. Department of
Corrections.

ACTION: Re-scheduled to the April 4-5, 2000 Board meeting

9. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. Sean Harrigan's appointment to the Board was unanimously recommended for approval by the Senate Rules Committee.
- B. The State Personnel Board budget hearing is scheduled for March 29, 2000.
- C. The State Personnel Board and major departments will conduct a job fair in Oakland on April 14, 2000.
- D. Staff in the Department of Corrections has expressed interest in the State Personnel Board conducting psychological interviews of all potential Correctional Officer appointees.

10. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on:

Litigation:

- A. Ming Liu v. State Personnel Board - California Supreme Court has denied a petition for review. The SPB's precedential decision in this case SPB Dec. No.97-02 is therefore final.
- B. ACSA v. DPA - On February 18, 2000, DPA and the CDF Firefighters filed an appeal of Judge Connelly's decision. On February 24, 2000, DPA and CDF Firefighters filed a joint return to the writ, setting forth modifications to the Unit 8 grievance and arbitration procedures that Judge Connelly found unconstitutional.
- C. Lauria v. State Personnel Board - The Superior Court has sustained the Board's decision in this case upholding the dismissal of a worker's compensation judge who, among other things, loudly and profanely ordered an attorney out of his office, throwing a file across the floor and crumpling up the order she had submitted to him and throwing that as well.

Other Matters:

- A. The Chief Counsel's Office has been requested by the State and Consumer Services Agency to prepare on a

monthly basis a Significant Matter Report advising that Agency of the status of significant litigation in which the Board is involved.

- B. Mediation update - Larry Hoover and I have made a number of presentations regarding the State Employee Mediation Program to a number of employee groups, departments, and other organizations. Most recently, presentations have been made to Department of General Services, Health and Human Services Data Center, Department of Social Services, the Ad Hoc Personnel Group, and Association of California State Supervisors. We are also scheduled to speak to Prison Industry Authority and the Air Resources Board.
- C. To date, the State Employee Mediation Program has mediated over 130 cases to conclusion with a written resolution rate of over 95%.

11. REPORT ON LEGISLATION - Judy Balmain

The Board was advised of the following:

- A. Senator Burton has agreed to author the Board's legislative proposal; Disability Discrimination: Conforming Language to the Fair Employment and Housing Act. (SB 2025).
- B. Laura Aguilera and Judy Balmain are in continuing discussion with Senator Escuita's staff on the Bilingual legislation. The staff has committed to having language for the Board's review at the March 21, 2000 Board meeting.
- C. Walter Vaughn and Judy Balmain met with Krist Lane consultant for the Senate Budget Committee in preparation for the March 29, 2000 Senate Budget Hearing.

BOARD ACTIONS

12. STATE PERSONNEL BOARD SUMMARY MINUTES OF FEBRUARY 23, 2000

ACTION: Adopted on March 7, 2000

VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

13. ACTION ON SUBMITTED ITEMS

ACTION: See pages 13-14.

14. ADMINISTRATIVE LAW JUDGE CASES
On March 7, 2000, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.
VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

REJECTED AND REMANDED DECISION

CLADIS SILVIE, CASE NO. 98-2458.
Appeal from dismissal
Department of Corrections
ACTION: Dismissal Sustained

CHIEF COUNSEL RESOLUTION

PAUL MUSTAIN, CASE NO. 13921.
Appeal from dismissal
Department of Fish and Game
ACTION: Appellant's request for order to show cause denied without prejudice to the right of appellant to seek a judicial remedy against the Department of Fish and Game.

PROPOSED DECISIONS

MICHAEL THIBAUT, CASE NO. 99-3940
Appeal from 5 percent reduction in Salary for 6 months
Department of the Youth Authority
ACTION: Reduction in Salary Sustained

ANDREW TERECLA, CASE NO. 99-3216
Appeal from dismissal
Department of Transportation
ACTION: Dismissal Sustained

NANSON HWA, CASE NO. 99-3444
Appeal from 5 percent reduction in Salary for 6 pay periods
Board of Equalization

ACTION: Reduction in Salary Sustained

DIANE PUENTEZ, CASE NO. 99-2914

Appeal from dismissal

Department of Transportation

ACTION: Dismissal Sustained

FREDERICK ROBERTSON, CAE NO. 99-3880

Appeal from dismissal

Department of Developmental Services

ACTION: Board adopted Findings of Fact, but modified
dismissal to official reprimand

KENNETH SEARVANCE, CASE NO. 99-3440

Appeal from 5 percent reduction in Salary for 12 months

Department of Corrections

ACTION: Reduction in Salary Sustained

JEAN LUCERO, CASE NO. 99-1996

Appeal from 5 working days suspension

California State University, Long Beach

ACTION: Suspension Sustained

MICHAEL R. GONZALES, CASE NO. 99-4850

Appeal from termination with fault from limited-term
appointment

Department of Forestry and Fire Protection

ACTION: Appeal Denied

MAURICE MOCK, CASE NO. 99-3329

Appeal from 5 percent reduction in Salary for 6 months

Department of Corrections

ACTION: Reduction in Salary Sustained

PAUL RICHARD, CASE NO. 99-4439

Appeal from 15 working days suspension

Department of Corrections

ACTION: Suspension Sustained

PETITIONS FOR REHEARING

HOMER B. "JOHN" FORD, CASE NO. 99-2106

Appeal from dismissal

Department of Housing and Community Development

ACTION: Petition for Rehearing Filed by Appellant Denied

JEANETTE DUTTON, CASE NO. 98-2550

Appeal from dismissal

Department of Corrections

ACTION: Petition for Rehearing Filed by Respondent Granted

BARBARA HAHN, CASE NO. 98-3757

Appeal from rejection

Department of Education

ACTION: Petition for Rehearing Filed by Appellant Denied

RUTH JOHNSON, CASE NO. 98-2433

Appeal from discrimination/retaliation

Department of Corrections

ACTION: Petition for Rehearing Filed by Appellant Denied

15. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1
EXTENSION.

ACTION: See pages 15-17.

16. MISCELLANEOUS APPEALS DIVISION CASES
(Discrimination Complaints, Withholds, Voided Appointments,
Rule 211 Appeals, Petitions for Rehearing)
On March 7, 2000, the Board adopted the following decisions
presented by Linda Brooks, Assistant Executive Officer,
California State Personnel Board.
VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

RULE 211 APPEAL

- A. ROBERT E. CLAYTON, Case No. 99-5176
Classification: Labor Relations Manager II
ACTION: DENIED

PETITION FOR REHEARING

- B. WALTER THOMASON, Case No. 99-5178
Classification: Special Investigator I
ACTION: DENIED

WITHHOLD FROM CERTIFICATION

- C. ERNESTO ZAVALZA, Case No. 99-1654
Classification: Correctional Officer
ACTION: GRANTED

- D. JONATHAN CARR, Case No. 99-2695
Classification: Cadet, California Highway Patrol
ACTION: DENIED
 - E. JASON ELLIS, Case No. 99-1294
Classification: Correctional Officer
ACTION: DENIED
 - F. MARIO OJEDA, Case No. 99-1343
Classification: Correctional Officer
ACTION: DENIED
 - G. FREDRICK A. GUNNISON; Case No. 99-4913
Classification: Correctional Officer
ACTION: GRANTED
 - H. UBALDO ALBANO, Case No. 99-1762
Classification: Correctional Officer
ACTION: DISMISSED
 - I. JULIO MARTIN; Case No. 99-4915
Classification: Correctional Officer
ACTION: DENIED
 - J. JUANA C. MARTINEZ; Case No. 99-3290
Classification: Correctional Officer
ACTION: DENIED
 - K. KEVIN W. MCGILLVRAY; Case No. 99-3574
Classification: Cadet, California Highway Patrol
ACTION: DENIED
 - L. JASON CAIN, Case No. 99-3759
Classification: Cadet, California Highway Patrol
ACTION: DISMISSED
17. MEDICAL APPEALS
- On March 7, 2000, the Board adopted the following decisions presented by Linda Brooks, Assistant Executive Officer, California State Personnel Board.
- VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.
- A. GARY NITAO, Case No. 99-3308
Classification: Correctional Officer
ACTION: DENIED
 - B. JUAN RAMIREZ, Case No. 99-4088

Classification: Cadet, California Highway Patrol
ACTION: DENIED

C. DOUG A. RUMMEL, Case No. 99-3161
Classification: Correctional Officer
ACTION: DENIED

D. MARY GAINES, Case No. 00-0198
Classification: Correctional Officer
ACTION: GRANTED

E. ULYSSES VALLEJO, Case No. 00-0196
Classification: Correctional Officer
ACTION: GRANTED

F. JAMES U. COLLINS, Case No. 99-3309
Classification: Parole agent I
ACTION: RESCINDED

G. BRUCE BELL, Case No. 99-5303
Classification: Youth Correctional Officer
ACTION: DISMISSED

H. CRAIG M. HIGASHIYAMA, Case No. 99-4984
Classification: Youth Correctional Counselor
ACTION: DISMISSED

18. EXAMINATION APPEALS

On March 7, 2000, the Board adopted the following decisions presented by Linda Brooks, Assistant Executive Officer, California State Personnel Board.

VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

A. DONALD BONE, Case No. 99-5140
Classification: CT Highway Maintenance Worker
ACTION: DISMISSED

19. MERIT ISSUE COMPLAINT APPEALS

On March 7, 2000, the Board adopted the following decisions presented by Linda Brooks, Assistant Executive Officer, California State Personnel Board.

VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

A. JAMES U. COLLINS, Case No. 99-3309
Classification: Parole agent I
ACTION: RESCINDED

20. REQUEST TO FILE CHARGES CASES

On March 7, 2000, the Board took the following actions presented by Linda Brooks, Assistant Executive Officer, California State Personnel Board.

VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

- A. MABELLE POLLARD, Case No. 99-1379
Classification: Office Assistant (Typing)
ACTION: DENIED

21. NON-HEARING CALENDAR

On March 7, 2000, the Board adopted items A-B. These items were presented by Laura Aguilera, Chief, Personnel Resources and Innovations Division, California State Personnel Board.

VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.

- A. RESEARCH PROGRAM SPECIALIST SERIES
RESEARCH PROGRAM SPECIALIST I (FIRE AND FUELS)
RESEARCH PROGRAM SPECIALIST II (FIRE AND FUELS)
The Department of Forestry and Fire Protection is proposing the establishment of two parenthetical specialty classes of Research Program Specialist I (Fire and Fuels) and Research Program Specialist II (Fire and Fuels) within the consolidated series specification for Research Program Specialist (Various Classes); and to establish a 12-month probationary period for each class.
- B. DEPUTY REGISTRAR OF CONTRACTORS SERIES
ENFORCEMENT REPRESENTATIVE, CONTRACTORS STATE LICENSE BOARD (CSLB)
DEPUTY REGISTRAR OF CONTRACTORS I
DEPUTY REGISTRAR OF CONTRACTORS II
ENFORCEMENT REPRESENTATIVE II, CSLB
ENFORCEMENT SUPERVISOR I, CSLB
DEPUTY REGISTRAR OF CONTRACTORS III
The Department of Consumer Affairs, on behalf of the Contractors State License Board, proposes specification revisions to the class series of Deputy Registrar of Contractors; title change to Enforcement Representative, Contractors State License Board (CSLB); consolidation of the Deputy Registrar of Contractors I and II classes into a deep class; establishment of the new classes of Enforcement Representative II, CSLB with a 12-month probationary period and Enforcement Supervisor I, CSLB with a 12-month probationary period;

and abolishment of the class of Deputy Registrar of Contractors III.

22. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

Staff has approved the following:

- A. PERMIT ASSISTANCE CENTER DIRECTOR
The Office of the Secretary, Cal/EPA is proposing a minor revision to the typical tasks portion of the specification for the class of Permit Assistance Center Director.

ACTION: Noted

23. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

- A. CEA POSITION ACTIONS CURRENTLY UNDER CONSIDERATION

NONE SUBMITTED

- B. CEA POSITION ACTIONS APPROVED BY DPA AND APPROVED OR DENIED BY SPB MANAGEMENT

- (1) CHIEF, BARBERING AND COSMETOLOGY PROGRAM
The Department of Consumer Affairs' proposal to allocate the above position to the CEA category has been approved effective February 11, 2000.

- (2) PROJECT MANAGER, STRATEGIC BUSINESS OPERATIONS
PROJECT MANAGER, FINANCIAL MANAGEMENT,
COMMUNICATIONS, PLANNING AND POLICY (California Child Support Automated Systems Project)
The Franchise Tax Board's proposal to allocate the above positions to the CEA category has been approved effective February 14, 2000.

- C. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO REFILL CEA POSITIONS ESTABLISHED BETWEEN 6/30/95 AND 1/1/99

- (1) DEPUTY DIRECTOR
The Office of Traffic Safety's request to refill the above position has been approved effective February 9, 2000.

- (2) CHIEF, REGISTRATION POLICY AND AUTOMATION BRANCH
The Department of Motor Vehicles' request to
refill the above position has been approved
effective February 14, 2000.

ACTION: Noted

A D J O U R N M E N T

SUBMITTED

1. EQUAL OPPORTUNITY GOALS FOR MINORITIES AND WOMEN
(Hearing held February 9, 2000).

NO ACTION

2. DEANNA DAVIES, CASE NO. 99-0073. Appeal from determination of back pay. State Board of Equalization. (Oral argument held February 9, 2000.)

NO ACTION

3. JAMES H. COOPER, CASE NO. 99-1090. Appeal from dismissal. Department of Corrections. (Oral argument held February 9, 2000.)

ACTION: On March 7, 2000, adopted Board decision - Proposed decision granting appellant's motion to dismiss and revoking the dismissal taken by the Department of Corrections against James H. Cooper is hereby revoked; the matter is remanded to Administrative Law Judge and shall be set for further hearing so that James H. Cooper may be afforded the opportunity to present evidence in his defense to the dismissal taken against him by the Department of Corrections.

VOTE: Alvarado, Carpenter, Elkins - Aye.

4. BERLINDA A. GREEN, CASE NO. 99-1067. Appeal from dismissal. Department of Motor Vehicle. (Oral argument held February 9, 2000.)

ACTION: On March 7, 2000, adopted Board decision modifying dismissal to 1-year suspension with back salary and benefits.

VOTE: Alvarado, Carpenter, Elkins - Aye.

5. APPEAL OF THE CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD (CIWMB) FROM THE EXECUTIVE OFFICER'S SEPTEMBER 23, 1999 DISAPPROVAL OF CIWMB'S CONTRACT WITH PRICE WATERHOUSE COOPERS IN RESPONSE TO THE REQUEST FOR REVIEW UNDER GOVERNMENT CODE 19130 SUBMITTED BY THE CALIFORNIA STATE EMPLOYEES ASSOCIATION (Hearing held February 9, 2000.)

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ACTION: On March 7, 2000, the Board adopted a non precedential decision which sustained the Executive Officer's September 23, 1999 decision disapproving CIWMB's contract with Price Waterhouse Coopers, finding that CIWMB did not show that the contract was justified under either Government Code § 19130(b)(3) or § 19130(b)(10).

VOTE: Alvarado, Carpenter, Elkins - Aye.

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional forty-five days, the Board hereby publishes its substantial reasons for the need for the forty-five day extension for some of the cases now pending before it for decision.

An additional forty-five days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board

for less than 6 months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on March 7, 2000.

WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Bos, Alvarado, Carpenter, Elkins, Harrigan - Aye.